

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4988 OF 1998

Glaxo India Ltd. & Anr.	...Plaintiffs
VS.	
Kanpur Bombay Transport Company	...Defendant

Ms Kanizz Munjee i/b M/s.Motiwala & Co. for the Plaintiffs

CORAM: A.S.OKA, J.
DATE : JULY 19, 2007

JUDGMENT:

1. The suit is kept under the caption of 'Undefended suits for exparte decree'.

2. The Plaintiffs have filed an Affidavit in lieu of examination in chief of one Jayant M. Gadkari, Administrative Officer of the second Plaintiff. The said Affidavit is taken on record and marked 'X' for identification. Original documents have been filed in the form of a compilation of documents. The said compilation is taken on record and marked 'Y' (collectively) for identification.

3. According to the case of the Plaintiffs, the defendant had agreed to carry four consignments each consisting of different number of cases of H.L.Medicines to the godown of the first Plaintiff at Lucknow. When the truck carrying the consignments reached the godown of the first Plaintiff on 6th November 1995, it was noticed that the number of cases out of the said four consignments were not delivered. By a letter dated 6th November 1985, the first Plaintiff lodged their claim with the defendants and requested for short landing

certificate. Along with the reply dated 11th November 1985, the defendants forwarded a short landing certificate. According to the case made out in the said reply, material was stolen in the transit and in fact a F.I.R. was registered at the instance of the defendants. In the short landing certificate, the defendants admitted the short landing of the goods worth of Rs.6,19,146/-. A short landing certificate was also issued on 21st November 1995 by M/s.Krishna & Company, surveyors assessing the loss in the sum of Rs.6,19,146/-. The consignments were insured by the first Plaintiff with the second Plaintiff. On a claim made by the first Plaintiff on the basis of policy of insurance, the second Plaintiff paid to the first Plaintiff a sum of Rs.6,28,587/-. On 1st April 1998 a letter of subrogation was issued by the first Plaintiff in favour of the second Plaintiff in the sum of Rs.6,28,587/-.

4. Perusal of the Affidavit shows that the claim of the Plaintiffs in the suit has been duly proved. The original documents which are tendered on record forming part of the compilation are also duly proved by the said Affidavit of Mr.Jayant Gadkari. There is no stipulation in the agreement between the parties as regards payment of interest. Therefore, the interest payable will be at the rate of 6% p.a. Hence, there will be decree in terms of prayer clauses (a) and (b) with a modification that the interest payable will be at the rate of 6% p.a. from the date of institution of the suit till the payment or realisation. Certified copy is expedited.

JUDGE